

109TH CONGRESS
1ST SESSION

S. 2161

To amend the Safe Drinking Water Act to prevent the enforcement of certain national primary drinking water regulations unless sufficient funding is available or variance technology has been identified.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2005

Mr. INHOFE (for himself, Mr. DOMENICI, Mr. HAGEL, and Mr. NELSON of Nebraska) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Safe Drinking Water Act to prevent the enforcement of certain national primary drinking water regulations unless sufficient funding is available or variance technology has been identified.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small System Safe
5 Drinking Water Act of 2005”.

1 **SEC. 2. COMPLIANCE AND ENFORCEMENT.**

2 (a) GUIDANCE.—Section 1412(b)(4)(E) of the Safe
3 Drinking Water Act (42 U.S.C. 300g–1(b)(4)(E)) is
4 amended by adding at the end the following:

5 “(vi) GUIDANCE.—As soon as prac-
6 ticable after the date of enactment of this
7 clause, the Administrator shall—

8 “(I) convene a working group
9 composed of representatives from
10 States, small publicly-owned water
11 systems, and treatment manufactur-
12 ers, which shall, not later than 180
13 days after the date of enactment of
14 this clause, conduct a study of, and
15 submit to the Administrator a report
16 on, barriers to the use of point-of-use
17 and point-of-entry treatment units,
18 package plants, including water bot-
19 tled by the public water system, and
20 modular units;

21 “(II) develop a model guidance
22 document based on recommendations
23 received from the working group
24 under subclause (I) and similar State
25 guidance documents for distribution
26 to States to assist States in regulating

1 and promoting the treatment options
 2 described in subclause (I); and

3 “(III) distribute to small water
 4 systems—

5 “(aa) the model guidance
 6 document developed under sub-
 7 clause (II); and

8 “(bb) such other information
 9 relating to the treatment options
 10 described in subclause (I) as the
 11 Administrator considers to be ap-
 12 propriate.”.

13 (b) ENFORCEMENT OF NATIONAL PRIMARY DRINK-
 14 ING WATER REGULATIONS.—

15 (1) HEALTH EFFECTS.—Section 1412(b)(3)(C)
 16 of the Safe Drinking Water Act (42 U.S.C. 300g–
 17 1(b)(3)(C)) is amended by adding at the end the fol-
 18 lowing:

19 “(v) HEALTH EFFECTS.—When pro-
 20 posing any national primary drinking
 21 water regulation that includes a maximum
 22 containment level, health effects shall be
 23 clearly translated into—

24 “(I) the quantity of water that
 25 an individual can consume; and

1 “(II) the length of time that may
 2 elapse before the effects of a contami-
 3 nate can occur.”.

4 (2) FEASIBLE TECHNOLOGIES.—Section
 5 1412(b)(4)(E)(i) of the Safe Drinking Water Act
 6 (42 U.S.C. 300g–1(b)(4)(E)(i)) is amended by add-
 7 ing at the end: “The technologies shall reflect the
 8 different water sources from various regions of the
 9 United States.”.

10 (3) VARIANCE TECHNOLOGIES.—Section
 11 1412(b)(15) of the Safe Drinking Water Act (42
 12 U.S.C. 300g–1(b)(15)) is amended—

13 (A) in subparagraph (A)—

14 (i) by redesignating clauses (i)
 15 through (iii) as subclauses (I) through
 16 (III), respectively, and indenting appro-
 17 priately;

18 (ii) by striking “(A) IN GENERAL.—
 19 At the” and inserting the following:

20 “(A) TECHNOLOGIES.—

21 “(i) IN GENERAL.—At the”; and

22 (iii) by adding after the matter fol-
 23 lowing subparagraph (A)(i)(III) (as redes-
 24 ignated by clause (i)) the following:

1 “(B) AFFORDABILITY.—In establishing af-
2 fordability criteria under this subparagraph, the
3 Administrator shall—

4 “(i) in determining whether a treat-
5 ment technology or treatment technique is
6 affordable, include consideration of costs
7 associated with complying with all relevant
8 regulations promulgated in accordance
9 with this Act and the Federal Water Pollu-
10 tion Control Act (33 U.S.C. 1251 et seq.)
11 with which a municipality or small public
12 water system may be required to comply;

13 “(ii) give extra weight to households
14 the total income of which is below the pov-
15 erty level, and to communities that meet
16 the affordability criteria of a State estab-
17 lished in accordance with section
18 1452(b)(3)(A)(iii), as determined by the
19 Administrator; and

20 “(iii) ensure that the affordability cri-
21 teria are not more costly, on a per-capita
22 basis, to a small public water system than
23 the cost, on a per-capita basis, to a large
24 water system of acquiring feasible tech-
25 nology described in paragraph (4).”.

1 (B) by adding at the end the following:

2 “(E) ENFORCEMENT.—No national pri-
 3 mary drinking water regulation promulgated
 4 under this Act to regulate a public water sys-
 5 tem serving a population of less than 10,000 in-
 6 dividuals may be enforced by the Administrator
 7 or a State unless a variance technology has
 8 been identified in accordance with this para-
 9 graph.”.

10 (4) EFFECT OF BILATERAL COMPLIANCE
 11 AGREEMENT.—Section 1412 of the Safe Drinking
 12 Water Act (42 U.S.C. 300g–1) is amended by add-
 13 ing at the end the following:

14 “(f) EFFECT OF BILATERAL COMPLIANCE AGREE-
 15 MENT.—A system that has entered into a bilateral compli-
 16 ance agreement with the State, and complied with that
 17 agreement, shall be considered to be in compliance with
 18 the Federal drinking water standard that is the subject
 19 of the compliance agreement for the duration of the agree-
 20 ment.”.

21 (5) STATE REVOLVING LOAN FUNDS.—Section
 22 1452 of the Safe Drinking Water Act (42 U.S.C.
 23 300j–12) is amended—

1 (A) by redesignating subsections (n), (o),
 2 (p), (q), and (r) as subsection (o), (p), (q), (r),
 3 and (s) respectively; and

4 (B) by inserting after subsection (m) the
 5 following:

6 “(n) ENFORCEMENT.—No national primary drinking
 7 water regulation promulgated under this Act may be en-
 8 forced by the Administrator or a State unless sufficient
 9 funds are available under this title to assist each public
 10 water system in meeting the regulation.”.

11 (c) RENEWAL OF EXEMPTION.—Section 1416(b)(2)
 12 of the Safe Drinking Water Act (42 U.S.C. 300g-5(b)(2))
 13 is amended by striking subparagraph (C) and inserting
 14 the following:

15 “(C) In the case of a system that does not
 16 serve more than a population of 10,000 and
 17 that needs financial assistance for the necessary
 18 improvements, an exemption granted under
 19 clause (i) or (ii) of subparagraph (B) may be
 20 renewed for such period as the State determines
 21 to be appropriate, if the system establishes that
 22 it is taking all practicable steps to meet the re-
 23 quirements of subparagraph (B).”.

24 (d) RESEARCH, TECHNICAL ASSISTANCE, INFORMA-
 25 TION, AND TRAINING OF PERSONNEL.—Section 1442 of

1 the Safe Drinking Water Act (42 U.S.C. 300i) is amend-
2 ed—

3 (1) by striking subsection (d) and inserting the
4 following:

5 “(d) RESEARCH AND DEVELOPMENT PILOT
6 PROJECTS.—

7 “(1) IN GENERAL.—The Administrator shall es-
8 tablish a research pilot program (referred to in this
9 subsection as the ‘program’) to explore new tech-
10 nologies or approaches that public water systems
11 may use to comply with a public drinking water
12 standard promulgated under this Act.

13 “(2) RESPONSIBILITIES OF ADMINISTRATOR.—
14 In carrying out this subsection, the Administrator
15 shall—

16 “(A) establish an application process that
17 includes criteria that may be used to assess
18 water systems applying for participation in the
19 program;

20 “(B) based on applications received under
21 subparagraph (A), select 20 communities with
22 various populations and water sources in dif-
23 ferent regions of the United States for partici-
24 pation in the program;

1 “(C) fund projects that develop or imple-
 2 ment new technologies or approaches for imple-
 3 mentation of Federal drinking water standards;
 4 and

5 “(D) coordinate projects with the Arsenic
 6 Water Technology Partnership program of the
 7 Department of Energy.

8 “(3) TECHNOLOGY TRANSFER AND DISINFEC-
 9 TION STRATEGIES.—The Administrator shall carry
 10 out a pilot program to conduct research into tech-
 11 nology transfer issues and disinfection strategies re-
 12 lating to drinking water, including risks associated
 13 with the migration to chloramines for the purpose of
 14 water disinfection.”; and

15 (2) in subsection (e)—

16 (A) in the first sentence, by striking “The
 17 Administrator” and inserting the following:

18 “(1) IN GENERAL.—The Administrator”;

19 (B) in the second sentence, by striking
 20 “Such assistance” and inserting the following:

21 “(2) TYPES OF ASSISTANCE.—Assistance pro-
 22 vided under paragraph (1)”;

23 (C) in the third sentence, by striking “The
 24 Administrator” and inserting the following:

1 “(3) AVAILABILITY OF ASSISTANCE.—The Ad-
2 ministrator”;

3 (D) in the fourth sentence, by striking
4 “Each nonprofit” and inserting the following:

5 “(4) CONSULTATION WITH STATE.—Each non-
6 profit”; and

7 (E) by striking the fifth sentence and all
8 that follows through the end of the subsection
9 and inserting the following:

10 “(5) ASSISTANCE IN COMPLYING WITH
11 RULES.—The Administrator shall ensure, to the
12 maximum extent practicable, that each water system
13 required to comply with Federal drinking water rules
14 receives adequate technical assistance and training
15 to meet the requirements of those final rules, includ-
16 ing through assistance to be provided by qualified
17 nonprofit associations with expertise in public water
18 systems.

19 “(6) PRIORITY.—The Administrator shall give
20 priority for assistance under this section to water
21 systems that, as of the date of enactment of this
22 paragraph, are not in compliance with, as deter-
23 mined by the Administrator—

24 “(A) the final rule entitled ‘Disinfectants
25 and Disinfection Byproducts’ and published by

1 the Administrator on December 16, 1998 (63
2 Fed. Reg. 69390); or

3 “(B) the final rule entitled ‘Arsenic and
4 Clarifications to Compliance and New Source
5 Contaminants Monitoring’ and published by the
6 Administrator on January 22, 2001 (66 Fed.
7 Reg. 6976).

8 “(7) ENFORCEMENT ACTION.—The Adminis-
9 trator shall not initiate any enforcement action
10 against a water system under this Act unless the
11 Administrator first provides to the water system as-
12 sistance in accordance with this subsection.

13 “(8) FUNDING.—

14 “(A) AUTHORIZATION OF APPROPRIA-
15 TIONS.—There is authorized to be appropriated
16 to carry out this subsection \$15,000,000 for
17 each of fiscal years 2006 through 2010.

18 “(B) LOBBYING EXPENSES.—No portion
19 of any State revolving loan fund established
20 under section 1452, and no portion of any
21 funds made available under this subsection,
22 may be used for lobbying expenses.

23 “(C) TRIBAL ASSISTANCE.—Of the amount
24 made available under subparagraph (A) for a
25 fiscal year, at least 3 percent shall be used for

1 technical assistance to public water systems
2 owned or operated by Indian Tribes.”.

3 (e) CONTAMINANT STUDY AND REPORT.—

4 (1) ESTABLISHMENT OF PANEL.—The Adminis-
5 trator of the Environmental Protection Agency (re-
6 ferred to in this subsection as the “Administrator”)
7 shall establish a panel of experts composed of not
8 more than 6 members appointed by the Adminis-
9 trator, of whom—

10 (A) 1 member shall be selected by the Ad-
11 ministrator;

12 (B) 1 member shall be appointed based on
13 the recommendation of State water administra-
14 tors;

15 (C) 3 members shall be appointed based on
16 the recommendation of associations rep-
17 resenting public water systems; and

18 (D) 1 member shall be appointed based on
19 the recommendation of the National Academy
20 of Sciences.

21 (2) DUTIES.—The panel of experts shall—

22 (A) conduct a review of studies on the
23 health effects of exposure to arsenic and dis-
24 infection byproducts; and

1 (B) not later than 180 days after the date
2 of enactment of this Act, submit to the Com-
3 mittee on Environment and Public Works of the
4 Senate and the Committee on Energy and Com-
5 merce of the House of Representatives a report
6 that includes—

7 (i) the results of the review; and

8 (ii) an assessment of the most recent
9 scientific findings relating to the health ef-
10 fects of exposure to the substances de-
11 scribed in subparagraph (A), including a
12 comparison of studies and research con-
13 ducted after the date on which maximum
14 contaminant levels and maximum contami-
15 nant level goals for those substances were
16 established in accordance with section
17 1412 of the Safe Drinking Water Act (42
18 U.S.C. 300g-1).

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